

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**ANTHONY OLIPHANT, KEVIN
MILES and STEVE BIZARRI**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:06CV235LS

**FRED'S STORES OF TENNESSEE, INC.;
FRED'S INC.; DENNIS CURTIS and
JOHN D. REIER**

DEFENDANTS

ORDER

This matter came before the court on the Defendants' Motion to Transfer and Consolidate, by which they seek to move this matter to the Northern District of Mississippi and consolidate it with a pending matter in that District. This court has no authority to command that this case be consolidated with one pending in another court; the only action available to this court is to decide whether the case should be transferred to the Northern District. A transfer may be authorized under 28 U.S.C. § 1404 "for the convenience of parties and witnesses, in the interest of justice." The parties have given the court little information as to whether such a move would be more convenient. It is a different standard than that for consolidation under Fed. R. Civ. P. 42(a), which requires a common question of law or fact. The parties' pleadings go more to the issue of consolidation than transfer, an issue on which the parties here seem to focus. There is little or no discussion as to the present location of the parties or the witnesses or the relative convenience to them of litigating in either location.

IT IS, THEREFORE, ORDERED that the Motion to Transfer and Consolidate is hereby **denied**.

IT IS SO ORDERED, this the 1st day of September, 2006.

S/James C. Sumner

UNITED STATES MAGISTRATE JUDGE